

# Advisory Opinion

IECDB AO 2007-02

June 28, 2007

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on the issue on the application of the corporate contribution ban to other types of business entities. The Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

OPINION:

Iowa Code section 68A.503, in part, prohibits certain entities from making contributions to influence the outcome of candidate elections. That statute, in pertinent part, states the following:

“Except as provided in subsections 3 and 4, it is unlawful for an insurance company, savings and loan association, bank, credit union, or corporation organized pursuant to the laws of this state, the United States, or any other state, territory, or foreign country, whether for profit or not, or an officer, agent, or representative acting for such insurance company, savings and loan association, bank, credit union, or corporation, to contribute any money, property, labor, or thing of value, directly or indirectly, to a committee, or to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office....”<sup>1</sup>

The issue has been raised if the corporate contribution ban applies to other business entities. If the business entity is established as an insurance company, savings and loan association, bank, or credit union, clearly the business entity falls under the prohibitions in Iowa Code section 68A.503. The remaining issue is whether or not the business entity is treated as a “corporation” for purposes of the statute.

Generally, the issue of whether or not the corporate contribution ban applies to other types of business entities has arisen in the context of a limited liability company (LLC). Corporations are created by the filing of articles of incorporation with the government. An LLC is created by filing articles of organization with the government. Other business entities may or may not file paperwork with the government. These business entities may have some of the same legal benefits that are available to corporations. However, corporations and these other business entities are not identical legal entities.

In determining whether a business entity is or is not a “corporation” the Board will look to see if the business entity files articles of incorporation or some other type of legal document. If a business entity files articles of incorporation, then it is a corporation and falls under the prohibitions in Iowa Code section 68A.503. If a business entity files some other type of paperwork, it is not a corporation and it will not fall under the prohibitions of Iowa Code section 68A.503 (unless it is an entity that is otherwise a prohibited contributor under the statute).

In closing, the Board notes that this opinion is limited to the sole issue of how certain business entities will be treated under Iowa Code section 68A.503 as applied to the creation and form of the entities.

#### BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair  
Janet Carl, Vice Chair  
Gerald Sullivan  
Betsy Roe  
John Walsh  
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

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<sup>1</sup>The statute also provides that these prohibitions do not apply to ballot issue elections.